

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4653 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

T I DANIEL,

Versus

GUJARAT LABOUR WELFARE BOARD

Appearance:

MR AJ YAGNIK for Mr. GIRISH PATEL for Petitioner
MR MANISH PANDYA for Mr AS PANDYA for Respondent No.1
MR PUJARI AGP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 01/12/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner before this Court, at the relevant

time, was serving in the Gujarat Labour Welfare Board, the respondent no. 1 herein [hereinafter referred to as, 'the Board] as an Assistant Welfare Commissioner. Pending this petition, he has retired from service on 4th September, 1992. The petitioner challenges the inaction of the Board in not implementing its decision to upgrade one post of Assistant Welfare Commissioner to that of Additional Welfare Commissioner and to appoint the petitioner as Additional Welfare Commissioner.

3. It appears that the post of Welfare Commissioner in the Board is required to be filled-in by promotion from amongst the Assistant Welfare Commissioners, on selection basis. The post of Welfare Commissioner fell vacant in the year 1989. The petitioner and one Ms. Desai who were then serving as Assistant Welfare Commissioners were called upon to appear before the Selection Committee for an interview. After holding such interview, the Selection Committee selected and recommended Smt.Desai for being appointed as Welfare Commissioner and also recommended that one post of Assistant Welfare Commissioner be upgraded as Welfare Commissioner [Accounts & Audit] and the petitioner being the senior most Assistant Welfare Commissioner and having experience of accounts, be appointed as Additional Welfare Commissioner till he retires from service. The said recommendation made by the Selection Committee was accepted by the Board in its General Meeting held on 3rd August, 1989 and the proposal was made to the State Government for approval. The State Government, in its Labour & Employment Department, under its letter dated 14th March, 1990 communicated its approval to the effect that the existing post of Assistant Welfare Commissioner [Accounts & Audit] be upgraded as Additional Welfare Commissioner [Accounts & Audit] in the Pay Scale of Rs. 3500-5000, as a special case, till 4th September, 1992 on condition that over and above the said post, one post of Assistant Welfare Commissioner shall be kept vacant till 4th September, 1992. In spite of the said approval, the post of Assistant Welfare Commissioner held by the petitioner was not upgraded. The petitioner, therefore, made representations on 6th March, 1990 and 9th April, 1990 to which the petitioner was replied that the Government had not approved the proposal made by the Board in its Resolution dated 3rd August, 1989, but had given a conditional approval which was required to be placed in the meeting of the Board. In its meeting on 10th May, 1990, the Board resolved, inter alia, to impress the State Government the necessity of filling up four posts of Assistant Welfare Commissioners. Feeling aggrieved, the petitioner has preferred the present

petition and has prayed that the above referred Resolution dated 10th May, 1990 may not be implemented and the post of Assistant Welfare Commissioner held by the petitioner be upgraded as Additional Welfare Commissioner and the petitioner be promoted as such.

4. Mr. Yagnik has strenuously urged that once the Board had taken a policy decision to upgrade the post of Assistant Welfare Commissioner which was approved by the State Government, the Board was duty bound to implement its Resolution and to upgrade the post of Assistant Welfare Commissioner held by the petitioner and to give the benefit to the petitioner of appointment as Additional Welfare Commissioner, as approved by the State Government. I am unable to agree with the contention raised by Mr. Yagnik. First, there was neither a fundamental right nor a statutory right to appointment as a Welfare Commissioner or Additional Welfare Commissioner. It only appears that the petitioner had been serving as an Assistant Welfare Commissioner for a long time and with the selection of Mrs. Desai for being appointed as Welfare Commissioner, the petitioner had no chance of promotion. The lack of chance of promotion was attempted to be mitigated by upgrading one post of Assistant Welfare Commissioner to that of Additional Welfare Commissioner and by appointing the petitioner on the said higher post of Additional Welfare Commissioner. It is admitted by Mr. Yagnik that at the relevant time there were five sanctioned posts of Assistant Welfare Commissioners and if one of the said posts were upgraded, as resolved, the Board would be left with only four posts of Assistant Welfare Commissioners of which the Government wanted one post to be kept vacant. Considering the communication, Annexure-E to the petition and the Board Resolution dated 10th May, 1990, it is apparent that the Board was not agreeable to keep one post of Assistant Welfare Commissioner vacant and to put up with only three Assistant Welfare Commissioners i.e. the Board was not agreeable to accept the conditional approval granted by the State Government. If the conditional approval granted by the State Government was not acceptable to the Board, the Board, in my view, cannot be compelled to upgrade one post of Assistant Welfare Commissioner as initially recommended by it and also to keep one post of Assistant Welfare Commissioner vacant. The action/inaction of the Board complained of, is neither mala fide nor arbitrary and does not warrant interference. Besides, now after the retirement of the petitioner, the Board cannot be directed to upgrade the post of Assistant Welfare Commissioner as earlier recommended by it under its Resolution dated 3rd August,

1989 so as to confer certain monetary benefits upon the petitioner. The action taken in the interest of administration shall not be interfered with by this Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India. Petition is dismissed. Rule is discharged. Interim relief is vacated.

Prakash*